

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CAROLYN DELORES SWINTON
1545 Chandler Street
Oakland, CA 94603

Registered Nurse License No. 470832

Respondent

Case No. 2008-167

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on August 13, 2009.

IT IS SO ORDERED July 13, 2009.

Susanne Phillips, MSN, RN, FNP-BC
President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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of the State of California
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6 Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2008-167

11 **CAROLYN DELORES SWINTON**
1545 Chandler Street
12 Oakland, California 94603

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

13 Registered Nurse License No. 470832

14 Respondent.

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16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled proceedings that the following matters are true:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), is the Executive Officer of
20 the Board of Registered Nursing (Board), Department of Consumer Affairs. She brought this
21 action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr.,
22 Attorney General of the State of California, by Leslie E. Brast, Deputy Attorney General.

23 2. Respondent Carolyn Delores Swinton (Respondent) is representing herself
24 in this proceeding and has chosen not to exercise her right to be represented by counsel.

25 3. On or about July 31, 1992, the Board issued Registered Nurse License No.
26 470832 to Respondent. The license was in full force and effect at all times relevant to the
27 charges brought in Accusation No. 2008-167 and will expire on October 31, 2009, unless
28 renewed.

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1 Respondent worked only briefly at the facility at which the incident occurred and does not recall
2 the patient/victim. Nevertheless, she accepts responsibility for her conduct and has presented as
3 contrite and cooperative. She has remained employed without further incident. She is described
4 in her current work as an aide to a young adult patient with cerebral palsy as a sensitive,
5 consistent, flexible, and generally outstanding nurse.

6 CONTINGENCY

7 11. This stipulation shall be subject to Board approval. Respondent
8 understands and agrees that counsel for Complainant and Board staff may communicate directly
9 with the Board regarding this stipulation and settlement, without notice to or participation by
10 Respondent. By signing the stipulation, Respondent understands and agrees that she may not
11 withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers
12 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
13 Stipulated Settlement and Disciplinary Order shall be of no force or effect and, except for this
14 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
15 be disqualified from further action by having considered this matter.

16 12. The parties understand and agree that facsimile copies of this Stipulated
17 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
18 force and effect as the originals.

19 13. In consideration of the foregoing admissions and stipulations, the parties
20 agree that the Board may, without further notice or formal proceeding, issue and enter the
21 following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Registered Nurse License No. 470832 issued to
3 Respondent Carol Delores Swinton (Respondent) is revoked. However, the revocation is stayed
4 and Respondent is placed on probation for three (3) years on the following terms and conditions.

5 **Severability Clause.** Each condition of probation contained herein is a separate
6 and distinct condition. If any condition of this Order, or any application thereof, is declared
7 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
8 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
9 and enforceable to the fullest extent permitted by law.

10 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
11 A full and detailed account of any and all violations of law shall be reported by Respondent to
12 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
13 compliance with this condition, Respondent shall submit completed fingerprint forms and
14 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
15 as part of the licensure application process.

16 **Criminal Court Orders:** If Respondent is under criminal court orders, including
17 probation or parole, and the order is violated, this shall be deemed a violation of these probation
18 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

19 2. **Comply with the Board's Probation Program.** Respondent shall fully
20 comply with the conditions of the Probation Program established by the Board and cooperate
21 with representatives of the Board in its monitoring and investigation of the Respondent's
22 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
23 within no more than 15 days of any address change and shall at all times maintain an active,
24 current license status with the Board, including during any period of suspension.

25 Upon successful completion of probation, Respondent's license shall be fully
26 restored.

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1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when she resides outside
7 of California. Respondent must provide written notice to the Board within 15 days of any change
8 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where she has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which she has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of her good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to her employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after she obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
20 terminated or separated, regardless of cause, from any nursing, or other health care related
21 employment with a full explanation of the circumstances surrounding the termination or
22 separation.

23 **8. Supervision.** Respondent shall obtain prior approval from the Board
24 regarding Respondent's level of supervision and/or collaboration before commencing or
25 continuing any employment as a registered nurse, or education and training that includes patient
26 care.

27 Respondent shall practice only under the direct supervision of a registered nurse
28 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative

1 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
2 are approved.

3 Respondent's level of supervision and/or collaboration may include, but is not
4 limited to the following:

5 (a) Maximum - The individual providing supervision and/or collaboration is
6 present in the patient care area or in any other work setting at all times.

7 (b) Moderate - The individual providing supervision and/or collaboration is in
8 the patient care unit or in any other work setting at least half the hours Respondent works.

9 (c) Minimum - The individual providing supervision and/or collaboration has
10 person-to-person communication with Respondent at least twice during each shift worked.

11 (d) Home Health Care - If Respondent is approved to work in the home health
12 care setting, the individual providing supervision and/or collaboration shall have person-to-
13 person communication with Respondent as required by the Board each work day. Respondent
14 shall maintain telephone or other telecommunication contact with the individual providing
15 supervision and/or collaboration as required by the Board during each work day. The individual
16 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
17 site visits to patients' homes visited by Respondent with or without Respondent present.

18 9. **Employment Limitations.** Respondent shall not work for a nurse's
19 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
20 traveling nurse, or for an in-house nursing pool.

21 Respondent shall not work for a licensed home health agency as a visiting nurse
22 unless the registered nursing supervision and other protections for home visits have been
23 approved by the Board. Respondent shall not work in any other registered nursing occupation
24 where home visits are required.

25 Respondent shall not work in any health care setting as a supervisor of registered
26 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
27 nurses and/or unlicensed assistive personnel on a case-by-case basis.

28 Respondent shall not work as a faculty member in an approved school of nursing

1 or as an instructor in a Board approved continuing education program.

2 Respondent shall work only on a regularly assigned, identified and predetermined
3 worksite(s) and shall not work in a float capacity.

4 If Respondent is working or intends to work in excess of 40 hours per week, the
5 Board may request documentation to determine whether there should be restrictions on the hours
6 of work.

7 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
8 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
9 than six months prior to the end of her probationary term.

10 Respondent shall obtain prior approval from the Board before enrolling in the
11 course(s). Respondent shall submit to the Board the original transcripts or certificates of
12 completion for the above required course(s). The Board shall return the original documents to
13 Respondent after photocopying them for its records. 11.

14 12. **Cost Recovery.** Respondent shall pay to the Board costs associated with
15 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
16 amount of \$5,000.00. Respondent shall be permitted to pay these costs in a payment plan
17 approved by the Board, with payments to be completed no later than three months prior to the
18 end of the probation term.

19 If Respondent has not complied with this condition during the probationary term,
20 and Respondent has presented sufficient documentation of her good faith efforts to comply with
21 this condition, and if no other conditions have been violated, the Board, in its discretion, may
22 grant an extension of Respondent's probation period up to one year without further hearing in
23 order to comply with this condition. During the one year extension, all original conditions of
24 probation will apply.

25 13. **Violation of Probation.** If Respondent violates the conditions of her
26 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
27 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
28 license.

1 If during the period of probation, an accusation or petition to revoke probation has
2 been filed against Respondent's license or the Attorney General's Office has been requested to
3 prepare an accusation or petition to revoke probation against Respondent's license, the
4 probationary period shall automatically be extended and shall not expire until the accusation or
5 petition has been acted upon by the Board.

6 14. **License Surrender.** During Respondent's term of probation, if she ceases
7 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
8 probation, Respondent may surrender her license to the Board. The Board reserves the right to
9 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
10 take any other action deemed appropriate and reasonable under the circumstances, without
11 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
12 will no longer be subject to the conditions of probation.

13 Surrender of Respondent's license shall be considered a disciplinary action and
14 shall become a part of Respondent's license history with the Board. A registered nurse whose
15 license has been surrendered may petition the Board for reinstatement no sooner than the
16 following minimum periods from the effective date of the disciplinary decision:

17 (1) Two years for reinstatement of a license that was surrendered for any
18 reason other than a mental or physical illness; or

19 (2) One year for a license surrendered for a mental or physical illness.

20 ACCEPTANCE

21 I have carefully read the Stipulated Settlement and Disciplinary Order. I
22 understand the stipulation and the effect it will have on my Registered Nurse License. I enter
23 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
24 and agree to be bound by the Decision and Order of the Board of Registered Nursing.

25 DATED February 19, 2009

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28 CAROLYN DELORES SWINTON
Respondent

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DATED: March 18, 2009

FRANK H. PACOE
Supervising Deputy Attorney General

Carol Ann

Attorneys for Complainant

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2008-167*

11 **CAROLYN DELORES SWINTON**
1545 Chandler Street
12 Oakland, California 94603

A C C U S A T I O N

13 Registered Nurse License No. 470832

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
20 (Board), Department of Consumer Affairs.

21 2. On or about July 31, 1992, the Board issued Registered Nurse License
22 Number 470832 to Carolyn Delores Swinton (Respondent). The license was in full force and
23 effect at all times relevant to the charges brought herein; it will expire on October 31, 2007,
24 unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Code section 2761 states:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions. . .”

7. California Code of Regulations, title 16, section 1442, states:

“As used in Section 2761 of the code, ‘gross negligence’ includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.”

8. California Code of Regulations, title 16, section 1443, states:

“As used in Section 2761 of the code, ‘incompetence’ means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.”

9. California Code of Regulations, title 16, section 1443.5 states:

“A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical

1 sciences in applying the nursing process, as follows:

2 (1) Formulates a nursing diagnosis through observation of the client's physical
3 condition and behavior, and through interpretation of information obtained from the client and
4 others, including the health team.

5 (2) Formulates a care plan, in collaboration with the client, which ensures that
6 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
7 protection, and for disease prevention and restorative measures.

8 (3) Performs skills essential to the kind of nursing action to be taken, explains the
9 health treatment to the client and family and teaches the client and family how to care for the
10 client's health needs.

11 (4) Delegates tasks to subordinates based on the legal scopes of practice of the
12 subordinates and on the preparation and capability needed in the tasks to be delegated, and
13 effectively supervises nursing care being given by subordinates.

14 (5) Evaluates the effectiveness of the care plan through observation of the client's
15 physical condition and behavior, signs and symptoms of illness, and reactions to treatment and
16 through communication with the client and health team members, and modifies the plan as
17 needed.

18 (6) Acts as the client's advocate, as circumstances require, by initiating action to
19 improve health care or to change decisions or activities which are against the interests or wishes
20 of the client, and by giving the client the opportunity to make informed decisions about health
21 care before it is provided."

22 COST RECOVERY

23 10. Code section 125.3 provides, in pertinent part, that the Board may request
24 the administrative law judge to direct a licentiate found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence and/or Incompetence)

3 11. Respondent is subject to disciplinary action under Code section 2761,
4 subdivision (a)(1), for gross negligence and/or incompetence. The circumstances are as follows:

5 12. During early 1999, Respondent worked as a Registered Nurse at Excell
6 Health Care Center, a nursing home in Oakland, California. Her responsibilities included
7 nursing care of Patient A,^{1/} who had been admitted to the nursing home in November 1998 with a
8 diagnosis including COPD (Chronic Obstructive Pulmonary Disease), Congestive Heart Failure,
9 Atrial Fibrillation, Dementia and Dysphasia. Patient A was fitted with a gastric feeding tube. He
10 was entirely dependent on the tube for his medications and nourishment.

11 13. On or about January 16, 1999, Patient A's gastric tube was dislodged; it
12 was not re-inserted until or about January 29, 1999. During the intervening 13 days, Patient A
13 went without food or medicine. Respondent was among several registered nurses responsible for
14 Patient A's nursing care between about January 16 and January 29, 1999. Respondent failed to
15 draw attention to Patient A's condition, failed to advocate for replacement of his gastric tube, and
16 failed to document withholding administration of medication or nourishment from Patient A.^{2/}

17 SECOND CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct)

19 14. Respondent is subject to disciplinary action under Code section 2761,
20 subdivision (a), for unprofessional conduct as described in paragraphs 12 and 13, above.

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26 1. Patient A's identity is withheld to protect his privacy. His name will be disclosed in
27 discovery, upon request.

28 2. On January 31, 1999, Patient A was transferred in failing health to Summit Medical
Center, a nearby hospital, where he died later the same day.

1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 470832, issued
5 to Carolyn Delores Swinton;

6 2. Ordering Carolyn Delores Swinton to pay the Board of Registered Nursing
7 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and,

9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 11/14/07
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13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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